UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
FLINT

In re Sheila Hodge,

Debtor.

Case No. 15-30684-dof
Chapter 13
Hon. Daniel S. Opperman

______________________________________/

DARRELL PARKS,

Adv. Proc No:

Plaintiff,

v.

SHEILA HODGE

Defendant.

______________________________________/

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______________________________________/

ADVERSARY COMPLAINT TO DETERMINE DISCHARGEABILITY OF CERTAIN DEBTS UNDER 523(a)(4)

Creditor, DARRELL PARKS, through his attorneys, XUEREB LAW GROUP PC, by John R. Badeen, objects to the confirmation of the Chapter 13 plan as follows:

1. This is a core proceeding brought to determine dischargeability of a debt described in 11 USC § 523(a)(4),(6), and (15), and for denial of discharge pursuant to 11 USC § 727(a)(3) and (4).

2. Debtor/Defendant Sheila Hodge filed for Chapter 7 bankruptcy protection on March 20, 2015

3. Jurisdiction and venue are therefore proper before this court.

FACTUAL ALLEGATIONS

4. Darrell is the ex-husband of debtor.

5. According to the debtor's schedule, debtor has post judgment claims against Darrell in the amount of $150,000.00. Additionally, debtor asserts a claim of $1,000,000.00 for abuse of process for a "wrongful incarceration" against Darrell and others.

6. Additionally, debtor asserts a disputed debt to Darrell in the amount of $159,567.96.

7. This money owed to Darrell arises as a result of contempt findings against debtor and include damages for assets that were awarded to Darrell yet were used and spent by Debtor. Exhibit 1, February 24th Order.

8. Debtor, despite being under court order of the Genesee County Circuit Court to leave the assets untouched while litigation was pending, consistently shuffled retirement funds that were to be awarded to Darrell in the divorce. Exhibit 2, Injunction.

9. She did so in an effort to stop the Circuit Court from making a division of property.

10. Debtor then cashed out significant portions of those funds to allegedly pay debts in further effort to keep Darrell from obtaining them.

11. Debtor has thus far failed to provide a detailed accounting or proofs of these alleged payments, oftentimes citing payments in cash.

12. The cashing in of these assets was part of her effort to deprive Darrell of his marital share of those accounts.

13. Additionally, while not binding on this court, in its February 24, 2015 order, the Circuit Court Judge ruled that the debt shall be non-dischargeable in bankruptcy.

COUNT I – DISCHARGEABILITY – 11 USC § 523(a)(4)

14. Plaintiff incorporates paragraphs 1-13 above, as though fully restated here.

15. Defendant filed for protection under the bankruptcy code.

16. Defendant's debt to plaintiff is a debt for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny.

17. Defendant's debt to plaintiff arises from her cashing out of funds that were ordered to be maintained in the parties divorce action, or aiding and abetting the conversion of those funds.

18. Additionally, the Genesee County Circuit Court has ruled this debt non-dischargeable.

19. Defendant's debt to plaintiff is non-dischargeable pursuant to 11 USC § 523(a)(4).

THEREFORE, plaintiff requests this court enter an Order of Judgment determining this debt to be non-dischargeable pursuant to 11 USC § 523(a)(4), along with costs and attorney's fees wrongfully sustained.

COUNT II – DISCHARGEABILITY – 11 USC § 523(a)(6)

20. Plaintiff incorporates paragraphs 1-18 above, as though fully restated here.

21. Defendant filed for protection under the bankruptcy code.

22. Defendant's debt to plaintiff arose because of her willful and malicious waste of marital assets that defendant knew were to be awarded to plaintiff.

23. Defendant's acts were willful and malicious because she did them despite court orders not to.

24. This property was, or was to be, the property of Darrell.

25. Additionally, the Genesee County Circuit Court has ruled this debt non-dischargeable.

26. Defendant's debt to plaintiff is non-dischargeable pursuant to 11 USC § 523(a)(6).

THEREFORE, plaintiff requests this court enter an Order of Judgment determining this debt to be non-dischargeable pursuant to 11 USC § 523(a)(6), along with costs and attorney's fees wrongfully sustained.

COUNT III – DISCHARGEABILITY – 11 USC § 523(a)(15)

27. Plaintiff incorporates paragraphs 1-25 above, as though fully restated here.

28. Defendant filed for protection under the bankruptcy code.

29. Defendant's debt to plaintiff, her ex-husband, arose through divorce proceedings that are not covered by 523(a)(5).

30. The debt arises from a post-judgment order regarding property division. Exhibit 1.

31. The post-judgment order relates back to the original judgment of divorce, and was entered subsequent to an appeal filed by defendant.

32. Additionally, the Genesee County Circuit Court has ruled this debt non-dischargeable.

33. Defendant's debt to plaintiff is non-dischargeable pursuant to 11 USC § 523(a)(15).

THEREFORE, plaintiff requests this court enter an Order of Judgment determining this debt to be non-dischargeable pursuant to 11 USC § 523(a)(6), along with costs and attorney's fees wrongfully sustained.

COUNT IV – OBJECTION TO DISCHARGE – 11 USC § 727(a)(3)

34. Plaintiff incorporates paragraphs 1-32 above, as though fully restated here.

35. Defendant filed for protection under the bankruptcy code.

36. Defendant has concealed, destroyed, mutilated, falsified, and failed to keep or preserve records that lead to an accurate picture of her financial condition.

37. This is evidenced by her repeated past failures to produce financial documents as ordered by the Genesee County Circuit Court.

38. Defendant is not entitled to a discharge pursuant to 11 USC § 727(a)(3).

THEREFORE, plaintiff requests this court enter an order determining that defendant is not entitled to a discharge under 11 USC § 723(a)(3), along with costs and attorney's fees wrongfully sustained.

COUNT IV – OBJECTION TO DISCHARGE – 11 USC § 727(a)(4)

39. Plaintiff incorporates paragraphs 1-37 above, as though fully restated here.

40. Defendant filed for protection under the bankruptcy code.

41. Defendant has made false statements in her bankruptcy petition and papers, including, for example:

   a. Her claims regarding wrongful imprisonment when she was jailed for contempt of court failing to abide by circuit court orders;

   b. Her claim of any actual dispute regarding her debt to Darrell in that the only remaining "dispute" was raised in a family court motion to amend the judgment by her attorney specifically for the purpose of creating the "dispute;"

c. Her claim that she is entitled to money from Darrell.

d. Numerous other misstatements in her petition and schedules.

42. Defendant is not entitled to a discharge pursuant to 11 USC § 727(a)(4).

THEREFORE, plaintiff requests this court enter an order determining that defendant is not entitled to a discharge under 11 USC § 723(a)(4), along with costs and attorney's fees wrongfully sustained.

Respectfully submitted,

XUEREB LAW GROUP PC

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